

AGENZIA DEL TERRITORIO ANTITRUST INFRINGEMENT HAS BEEN CONFIRMED BY THE ITALIAN SUPREME COURT

The Italian Supreme Court, with the decision n. 30175 dated 30 December 2011, confirmed the sentence of abuse of dominant position ordered by the Court of Appeal of Torino of 2010 against Agenzia del Territorio.

Consequence of the mentioned decision is that the companies acting in the market of re-use of information coming from public registers can invoke the EU and national competition regulation every time the body- that manages the public register- behaves in a way (including putting into effect fee regulations or regulations about the use of data) that interfered with the business of those companies.

For the first time the Supreme Court granted the thesis brought by the major associations of the companies operating in the PSI re-use market (ACIF and ANCIC), that was based on the principles of the EU Treaty and on the art.8 of the Italian Competition Law (L. 287/1990). The thesis of ACIF and ANCIC has been developed in order to oppose the rules introduced by the Italian Budget Law 2005- that forbid the commercial reuse of cadastral information except if the companies sign a special agreement and the pays a fee every time each piece of information is reused- and in order to impute to Agenzia del Territorio the suffered loss of profitability.

The Supreme Court decision faced the issue on 3 steps: 1) the jurisdiction, 2) the configurability of abuse of market position on a public body and 3) the proof of damages.

About the first point (jurisdiction), the Supreme Court stated that the Court that is competent to decide on the nullity actions and the damages related to abuse of market position is the Court of Appeal that has the territorial jurisdiction, even if, eventually, some tax issues derive.

About the second point (abuse of dominant position), the Supreme Court stated that a) from an EC regulation point of view, Agenzia del Territorio is included in the mean of "enterprise", even if it is a public body, which institutional task is to keep the public registers b) the activities of Agenzia del Territorio are service of general interest c) the conduct of Agenzia del Territorio constitutes abuse of dominant position.

About this last point, the Court stated that has not been proved the functional link between the service of creation, storage and management of public register on one side and the power given to Agenzia del Territorio to limitate the reuse of data from other parties.

About the third point (proof of damages), the Italian Supreme Court stated that the Court of Appeal of Torino correctly applied the principle according to which it is allowed to give the expert witness assessment tasks.

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